

**TITLE 45--PUBLIC WELFARE AND HUMAN SERVICES  
PART 98 CHILD CARE AND DEVELOPMENT FUND**

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## **Subpart A. Goals, Purposes and Definitions**

### **Sec. 98.1 Goals and Purposes**

(a) The ~~goals purposes~~ of the CCDF are ~~to~~:

- (1) To Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within ~~that~~the State;
- (2) To Promote parental choice to empower working parents to make their own decisions ~~regarding on~~ the child care ~~services~~ that best suits their family's needs;
- (3) To Encourage States to provide consumer education information to help parents make informed choices about child care ~~services and to promote involvement by parents and family members in the development of their children in child care settings;~~
- (4) To Assist States ~~to provide child care to~~in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance; ~~and~~
- (5) To Assist States in ~~improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight and registration standards established in this subchapter and in State law (including State regulations);~~
- (6) To improve child care and development of participating children; and
- (7) To increase the number and percentage of low-income children in high-quality child care settings.

~~(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:~~

- ~~(1) Provide low income families with the financial resources to find and afford quality child care for their children;~~
- ~~(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF;~~
- ~~(3) Provide parents with a broad range of options in addressing their child care needs~~  
~~-Strengthen the role of the family;~~
- ~~(4) Improve the quality of, and coordination among child care programs and early childhood development programs; and~~
- ~~(5) Increase the availability of early childhood development and before- and after school care services.~~

~~(e)b~~ The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that State, Territorial, and Tribal Lead Agencies:

- (1) Maximize parental choice of safe, healthy and nurturing child care settings through the use of certificates and through grants and contracts, and by providing parents with information about child care programs;
- (2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;
- (3) ~~Provide~~Improve the quality and supply of child care and before- and after-school care services that meets applicable requirements and promote child development and learning and family economic stability;
- (4) Coordinate planning and delivery of services at all levels, including Federal, State, Tribal, and local;
- (5) Design flexible programs that provide for the changing needs of recipient families and engages families in their children's development and learning;
- (6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; ~~and~~

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development;

(8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen the child care workforce.

## **Sec. 98.2 Definitions**

For the purpose of this part and part 99:

*The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, as amended and codified at 42 U.S.C. 9858 et seq.

*ACF* means the Administration for Children and Families;

*Application* is a request for funding that includes the information required at § 98.13;

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services;

*Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

*Categories of care* means center-based child care, ~~group home child care,~~ family child care, and in-home care;

*Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

*Child care certificate* means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

*Child Care and Development Fund (CCDF)* means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

*Child care provider that receives assistance* means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

*Child care services*, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

*Child experiencing homelessness* means a child who is homeless as defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. 11434a);

*Child with a disability* means:

- (1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);
- (2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq);
- (3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); or
- (4) A child with a disability, as defined by the State, Territory or Tribe involved;

*Construction* means the erection of a facility that does not currently exist;

*The Department* means the Department of Health and Human Services;

*Director* means a person who has primary responsibility for the daily operations management for a child care provider, which may be a family child care home, and which may serve children from birth to kindergarten entry and children in school-age child care;

*Discretionary funds* means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

*Eligible child* means an individual; ~~who meets the requirements of § 98.20;~~

- (1) Who is less than 13 years of age;
- (2) Whose family income does not exceed 85 percent of the State median income for a family of the same size, and whose family assets do not exceed \$1,000,000 (as certified by a member of such family); and
- (3) Who--
  - (i) Resides with a parent or parents who are working or attending a job training or educational program; or
  - (ii) Is receiving, or needs to receive, protective services and resides with a parent or parents not described in paragraph (3)(i) of this definition;

*Eligible child care provider* means:

- (1) A center-based child care provider, ~~a group home child care provider~~, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that--
  - (i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and
  - (ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or
- (2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

English learner means an individual who is limited English proficient, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) or section 637 of the Head Start Act (42 U.S.C. 9832);

*Facility* means real property or modular unit appropriate for use by a grantee to carry out a child care program;

*Family child care provider* means one or more individual(s) who provides child care services for fewer than 24 hours per day per child, ~~as the sole caregiver,~~ in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

~~*Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;~~

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

*In-home child care provider* means an individual who provides child care services in the child's own home;

*Lead Agency* means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

*Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

*Liquidation period* means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60;

*Major renovation* means: (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change;

*Mandatory funds* means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

*Matching funds* means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

*Modular unit* means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

*Obligation period* means the applicable time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

*Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis;

*The Plan* means the Plan for the implementation of programs under the CCDF;

*Program period* means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

*Programs* refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality ~~and availability~~ activities pursuant to § 98.51;

*Provider* means the entity providing child care services;

*The regulation* refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

*Secretary* means the Secretary of the Department of Health and Human Services;

*Sectarian organization* or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

*Sectarian purposes* and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

*Services for which assistance is provided* means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

*Sliding fee scale* means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.425(k);

*State* means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and includes Tribes unless otherwise specified;

*Tribal mandatory funds* means the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and tribal organizations;

*Teacher* means a lead teacher, teacher, teacher assistant or teacher aide who is employed by a child care provider for compensation on a regular basis and whose responsibilities and activities



are to organize, guide and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care and may be a family child care provider;

*Tribal organization* means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

*Types of providers* means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

### **Sec. 98.3 Effect on State law.**

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

## **Subpart B. General Application Procedures**

### **Sec. 98.10 Lead Agency responsibilities**

The Lead Agency ~~,-(which may be an appropriate collaborative agency), or a joint interagency office,~~ as designated or established by the Governor chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); ~~and~~

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Consult, collaborate and coordinate in the development of the State Plan in a timely manner with Indian Tribes or tribal organizations in the State (at the option of the Tribe or tribal organization).



**Sec. 98.11 Administration under contracts and agreements**

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

- (1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;
- (2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and
- (3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part. The contents of the written agreement may vary based on the role the agency is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

- (1) Determine the basic usage and priorities for the expenditure of CCDF funds;
- (2) Promulgate all rules and regulations governing overall administration of the Plan;
- (3) Submit all reports required by the Secretary;
- (4) Ensure that the program complies with the approved Plan and all Federal requirements;
- (5) Oversee the expenditure of funds by subgrantees and contractors, in accordance with 75 CFR §§ 351 to 353;
- (6) Monitor programs and services;
- (7) Fulfill the responsibilities of any subgrantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and
- (8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

**Sec. 98.12 Coordination and consultation**

The Lead Agency shall:

- (a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).
- (b) Consult, in accordance with § 98.14 (b), with representatives of general purpose local government during the development of the Plan; and
- (c) Coordinate, to the maximum extent feasible, per § 98.10(f) with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

**Sec. 98.13 Applying for Funds**

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

- (a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.
- (b) The following assurances or certifications:

- (1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;
- (2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF-LLL) that discloses lobbying payments;
- (3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;
- (4) A certification that no principals have been debarred pursuant to 45 CFR 76.500;
- (5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;
- (6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103-277, Part C--Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

#### **Sec. 98.14 Plan process**

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a)(1) Coordinate the provision of services funded under this Part with other Federal, State, and local child care and early childhood development programs; (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services. The Lead Agency shall also coordinate the provision of services with the State, and if applicable, tribal agencies responsible for:

(A) Public health, including the agency responsible for immunizations;

(B) Employment services/workforce development;

(C) Public education (including agencies responsible for pre-kindergarten services, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

(D) Providing Temporary Assistance for Needy Families;

(E) Child care licensing;

(F) Head Start collaboration, as authorized by the Head Start Act (42 U.S.C. 9831 et seq.);

(G) State Advisory Council on Early Childhood Education and Care (designated or established pursuant to the Head Start Act (42 U.S.C. 9831 et seq.)) or similar coordinating body;

(H) Statewide after-school network or other coordinating entity for out-of-school time care (if applicable);

(I) Emergency management and response;

(J) Child and Adult Care Food Program (CACFP) authorized by the National School Lunch Act (42 U.S.C. 1766);

(K) Services for children experiencing homelessness, including State Coordinators of Education for Homeless Children and Youth (EHCY State Coordinators) and, to the extent practicable, local liaisons designated by Local Educational Agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and Continuum of Care grantees;

(L) Medicaid authorized by title XIX of the Social Security Act; and

(M) Mental health services.

(2) Provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(3) If the Lead Agency elects to combine funding for CCDF services with any other early childhood program, provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding.

(4) Demonstrate in the CCDF Plan how the State, Territory, or Tribe encourages partnerships among its agencies, other public agencies, Indian Tribes and Tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared service alliance models.

(b) Consult with appropriate representatives of local governments;

(c)(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in § 98.16 that it proposes to submit to the Secretary.

(d) Make the Plan and any Plan amendments publicly available.

**Sec. 98.15 Assurances and certifications**

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(f).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.535(h)(1).

(7) Training and professional development requirements comply with § 98.44 and are applicable to caregivers, teaching staff, and directors working for child care providers of services for which assistance is provided under the CCDF;

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m);

(9) The State will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Such guidelines shall—

(i) Be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;

(ii) Be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and

(iii) Be updated as determined by the State.

(10) Funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(i) Will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(ii) Will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(iii) Will be used as the primary or sole method for assessing program effectiveness; or

(iv) Will be used to deny children eligibility to participate in the program carried out under this subchapter.

(11) Any code or software for child care information systems or information technology that a Lead Agency or other agency expends CCDF funds to develop must be made available upon request to other public agencies for their use in administering [child care or related programs](#).

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) The State has developed the CCDF Plan in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, pursuant to § 98.14(a)(1)(G);

(2) In accordance with § 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(3) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(4) It will collect and disseminate to parents of eligible children ~~and~~, the general public ~~and~~, ~~where applicable, child care providers~~, consumer education information that will promote informed child care choices, ~~information on access to other programs for which families may be eligible, and information on developmental screenings~~, as required by § 98.33;

(5) In accordance with § 98.33(a), that the State makes public through a consumer-friendly and easily accessible website the results of monitoring and inspection reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings;

~~(46)~~ There are in effect licensing requirements applicable to child care services provided within the State ~~(or area served by Tribal Lead Agency)~~, pursuant to § 98.40;

~~(57)~~ There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

~~(68)~~ In accordance with § 98.41~~2(a)~~, procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements; ~~and~~

(9) Caregivers, teachers, and directors of child care providers comply with the State's, Territory's or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);

(10) There are in effect monitoring policies and practices pursuant to § 98.42;

~~(711)~~ Payment rates for the provision of child care services, in accordance with § 98.43~~5~~, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs;

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

(13) There are in effect policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.

## **Sec. 98.16 Plan provisions**

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

~~(c)~~ The assurances and certifications listed under § 98.15;

~~(d)~~(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.53~~5~~(f);

~~(e)~~ A description of the coordination and consultation processes involved in the development of the Plan and the provision of services, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14~~(a)~~ ~~and (b)~~;

~~(f)~~ A description of the public hearing process, pursuant to § 98.14(c);



(~~g~~<sup>f</sup>) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.4~~6~~:

- (1) Special needs child;
- (2) Physical or mental incapacity (if applicable);
- (3) Attending (a job training or educational program);
- (4) Job training and educational program;
- (5) Residing with;
- (6) Working;
- (7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.
- (8) Very low income; and
- (9) In loco parentis;

(h) A description and demonstration of eligibility determination and re-determination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

- (1) An eligibility re-determination period of no less than 12 months in accordance with § 98.21(a);
- (2) A graduated phase-out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);
- (3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);
- (4) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete eligibility re-determination, pursuant to § 98.21(d);
- (5) Limiting any requirements to report changes in circumstances in accordance with § 98.21(e);
- (6) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and
- (7) Other policies and practices such as timely eligibility determination and processing of applications;

(~~i~~<sup>g</sup>) For child care services pursuant to § 98.50:

- (1) A description of such services and activities, including how the Lead Agency will address supply shortages through the use of grants and contracts. The description should identify shortages in the supply of high quality child care providers, including for specific localities and populations, list the data sources used to identify shortages, and explain how grants or contracts for direct services will be used to address such shortages;
- (2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to §98.30(e)(1)(~~iv~~<sup>iii</sup>);
- (3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;
- (4) A description of how the Lead Agency will meet the needs of certain families specified at §98.50(e);
- (5) Any additional eligibility criteria, priority rules, and definitions established pursuant to §98.20(b);

(~~j~~<sup>h</sup>) A description of the activities to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, to increase parental choice, and to improve the quality and availability of child care, pursuant to § 98.51~~3~~;

- (~~k~~) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF, pursuant to § 98.42 and how co-payments are affordable for families, pursuant to § 98.45(k). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;
- (~~l~~) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);
- (~~m~~) A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers and directors;
- (~~n~~) A description of monitoring and other enforcement procedures in effect to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42;
- (~~o~~) A description of criminal background check requirements, policies, and procedures in accordance with § 98.43, including of description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe;
- (~~p~~) A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with § 98.44;
- (~~q~~) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);
- (~~r~~) Payment rates and a summary of the facts, including a biennial local market rate survey or alternative methodology relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.435;
- (~~s~~) A detailed description of the State's hotline for complaints, its process for responding to complaints, how the State maintains a record of substantiated parental complaints, and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;
- (~~t~~) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;
- (~~u~~) A detailed description of the licensing requirements applicable to child care services provided, any exemption to licensing requirements that is applicable to child care providers of services for which assistance is provided under the CCDF and a demonstration why such exemption does not endanger the health, safety, or development of children, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;



(~~vp~~) Pursuant to § 98.33(~~be~~), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(~~wq~~)(1) When any Matching funds under § 98.535(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.535(c)(1), or for more than 10% of the funds available at § 98.535(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(x) A description of the Lead Agency's strategies (which may include alternative payment rates to child care providers, the provision of direct grants or contracts, offering child care certificates, or other means) to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours;

(y) A description of how the Lead Agency prioritizes increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46;

(z) A description of how the Lead Agency develops and implements strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services;

(aa) A demonstration of how the State, Territory or Tribe will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S. C. 5122) through a Statewide Disaster Plan (or Disaster Plan for a Tribe's service area) that:

(1) For a State, is developed in collaboration with the State human services agency, the State emergency management agency, the State licensing agency, the State health department or public health department, local and State child care resource and referral agencies, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body; and

(2) Includes the following components:

(i) Guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services during a disaster, and temporary operating standards for child care after a disaster;

(ii) Coordination of post-disaster recovery of child care services; and

(iii) Requirements that child care providers of services for which assistance is provided under the CCDF, as well as other child care providers as determined appropriate by the State, Territory or Tribe, have in place:

(A) Procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and

(B) Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for child care providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii);

(bb) A description of payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices;

(cc) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verify eligibility, pursuant to § 98.68;

(dd) A description of how the Lead Agency will provide outreach and services to eligible families with limited English proficiency and persons with disabilities and facilitate participation of child care providers with limited English proficiency and disabilities in the subsidy system;

(ee) A description of policies on suspension and expulsion of children birth to age five in child care and other early childhood programs receiving assistance under this part, which must be disseminated as part of consumer and provider education efforts in accordance with §98.33(b)(1)(v);

(ff) Designation of a State, territorial, or tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, in accordance with §98.42(b)(4);

(gg) A description of how the Lead Agency will support child care providers in the successful engagement of families in children's learning and development;

(hh) A description of how the Lead Agency will respond to complaints submitted through the national hotline and website, required in the CCDBG Act of 2014 ( Section 658L(b)(2)), including the designee responsible for receiving and responding to such complaints regarding both licensed and license-exempt child care providers; and

(ii) Such other information as specified by the Secretary.

#### **Sec. 98.17 Period covered by Plan**

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of ~~three~~two years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

#### **Sec. 98.18 Approval and disapproval of Plans and Plan amendments**

(a) Plan approval. The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) Plan amendments.

(1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must ensure advanced written notice is provided to affected parties (i.e., parents and child care providers) of substantial changes in the program that adversely affect income eligibility, payment rates, and/or sliding fee scales.

(c) Appeal of disapproval of a Plan or Plan amendment.

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

#### **Sec. 98.19 Requests for Temporary Relief from Requirements**

(a) The Secretary may waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements for a State, consistent with the conditions described in section 658I(c)(1) of the Act, provided that the waiver request:

(1) Describes circumstances that prevent the State, Territory or Tribe from complying with any statutory or regulatory requirements of this part;

(2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;

(3) Will not contribute to inconsistency with the purposes of the Act or this part, and;

(4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) Types of waivers include:

(1) Transitional and legislative waivers. Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a one-year initial period;

(iii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of initial approval,

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) Waivers for extraordinary circumstances. States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of

extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

- (i) Limited to an initial period of no more than 2 years from the date of approval;
- (ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of initial approval, and;
- (iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) Waiver requests must be submitted to the Secretary in writing and:

- (1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;
- (2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;
- (3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children, and;
- (4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) Within 90 days after receipt of the waiver request or, if additional follow-up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) Termination. The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State, Territory or Tribe granted relief under this subsection has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) Renewal. The Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) Restrictions. The Secretary may not:

- (1) Permit Lead Agencies to alter the eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this part;
- (2) Waive anything related to the Secretary's authority under this part; or
- (3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

### **Subpart C--Eligibility for Services**

#### **Sec. 98.20 A child's eligibility for child care services**

(a) In order to be eligible for services under § 98.50, a child shall, at the time of eligibility determination or re-determination:

- (1)(i) Be under 13 years of age; or,
- (ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2)(i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and

(ii) Whose family assets do not exceed \$1,000,000 (as certified by such family member), and

(3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis, by, or in consultation with, an appropriate protective services worker.

(B) At grantee option, the waiver provisions in paragraph (a)(3)(ii)(A) of this section apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

(b) Pursuant to § 98.16(i)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.46, which shall be described in the Plan pursuant to § 98.16(i)(5), so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.46, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

(4) Impact eligibility other than at the time of eligibility determination or re-determination.

(c) For purposes of implementing the citizenship eligibility verification requirements mandated by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. § 1601 *et seq.*, only the citizenship and immigration status of the child, who is the primary beneficiary of the CCDF benefit, is relevant. Therefore, a Lead Agency or other administering agency may not condition a child's eligibility for services under § 98.50 based upon the citizenship or immigration status of their parent or the provision of any information about the citizenship or immigration status of their parent.

#### **Sec. 98.21 Eligibility determination processes**

(a) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination, subject to the following:

(1) During the period of time between re-determinations, if the child met all of the requirements in §98.20(a) on the date of the most recent eligibility determination or re-determination, the child shall be considered to be eligible and will receive services, regardless of:

(i) A change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(ii) A temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum:

(A) Any time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;



- (C) Any student holiday or break for a parent participating in training or education;
- (D) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education.
- (E) Any other cessation of work or attendance at a training or education program that does not exceed three months, or a longer period of time established by the Lead Agency;
- (F) Any change in age, including turning 13 years old during the eligibility period; and
- (G) Any change in residency within the State, Territory, or Tribal service area.
- (2) Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at the same level for a period of not less than three months after such loss or cessation in order for the parent to engage in job search and resume work, or resume attendance at a job training or educational activity.
- (3) Lead Agencies cannot increase family co-payment amounts, established in accordance with § 98.45(k), within the minimum 12-month eligibility period except as described in paragraph (b)(2) of this section.
- (4) Because a child meeting eligibility requirements at the most recent eligibility determination or re-determination is considered eligible between re-determinations as described in paragraph (a)(1) of this section, any payment for such a child shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances.
- (b) Lead Agencies that establish family income eligibility at a level less than 85 percent of SMI for a family of the same size (in order for a child to initially qualify for assistance) must provide a graduated phase-out by implementing two-tiered eligibility thresholds.
- (1) This can be accomplished either by:
- (i) Establishing the second tier of eligibility at 85 percent of SMI for a family of the same size and considering children to be eligible (pursuant to paragraph (a) of this section) if their parents, at the time of re-determination, are working or attending a job training or educational program even if their income exceeds the Lead Agency's income limit to initially qualify for assistance, but does not exceed the second eligibility threshold; or
- (ii) Using the approach specified in paragraph (b)(1)(i) of this section but only for a limited period of not less than an additional 12 months.
- (2) Lead Agencies may gradually adjust co-pay amounts for families that are determined eligible under the conditions described in paragraph (b) of this section to help families transition off of child care assistance.
- (c) The Lead Agency shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.
- (d) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility re-determination process.
- (e) The Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month period, and describe efforts

to ensure such requirements do not impact continuity for eligible families between redeterminations.

(1) The Lead Agency must require families to report a change at any point during the minimum 12-month period, limited to:

(i) If the family's income exceeds 85% of SMI, taking into account irregular income fluctuations; or

(ii) At the option of the Lead Agency, the family has experienced a non-temporary cessation of work, training, or education.

(2) Any requirement for parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

(i) Limit notification requirements to items that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;

(ii) Not require an office visit in order to fulfill notification requirements; and

(iii) Offer a range of notification options (e.g., phone, email, online forms, extended submission hours) to accommodate the needs of working parents;

(3) During a period of graduated phase-out, the Lead Agency may require additional reporting on changes in family income in order to gradually adjust family co-payments, if desired, as described in paragraph (b)(2) of this section.

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

(i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

(ii) Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85 percent SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, the family has experienced a non-temporary change in the work, training, or educational status.

(f) Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.

(g) Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.

## **Subpart D--Program Operations (Child Care Services) Parental Rights and Responsibilities**

### **Sec. 98.30 Parental choice**

(a) The parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under CCDF, are given the option either:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in § 98.2. Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.



(c) In cases in which a parent elects to use a child care certificate, such certificate:

- (1) Will be issued directly to the parent;
- (2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;
- (3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;
- (4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;
- (5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;
- (6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

- (i) Center-based child care; ~~(ii) Group home child care;~~
- ~~(iii)~~ Family child care; and
- ~~(iv)~~ In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(g)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Lead Agencies shall provide information regarding the range of provider options, as described in § 98.33, under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.43~~5~~, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

- (1) Expressly or effectively excluding:
  - (i) Any category of care or type of provider, as defined in § 98.2; or
  - (ii) Any type of provider within a category of care; or
- (2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2, with the exception of in-home care; or
- (3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality, such as those identified in a quality improvement system or other transparent system of quality indicators.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high quality child care.

### **Sec. 98.31 Parental access**

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description in the Plan of such procedures.

#### **Sec. 98.32 Parental complaints**

The State shall:

- (a) Establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers;
- ~~(b)~~ Maintain a record of substantiated parental complaints;
- ~~(c)~~ Make information regarding such parental complaints available to the public on request; ~~and~~
- ~~(d)~~ The Lead Agency shall provide a detailed description in the Plan of how such record is maintained and is made available.

#### **Sec. 98.33 Consumer and provider education**

The Lead Agency shall:

- ~~(a) Certify that it will collect and disseminate to parents and the general public consumer education information that will promote informed child care choices including, at a minimum, information about~~
  - ~~(1) The full range of providers available, and~~ consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible website that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities, including:
    - (1) Lead Agency processes, including:
      - (i) The process for licensing child care providers pursuant to § 98.40;
      - (ii) The process for conducting monitoring and inspections of child care providers pursuant to § 98.42;
      - (iii) Policies and procedures related to criminal background checks for child care providers pursuant to § 98.43; and
      - (iv) The offenses that prevent individuals from serving as child care providers.
    - (2) Provider-specific information for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including:
      - (i) A localized list of child care providers, differentiating between licensed and license-exempt providers, searchable by zip code;
      - (ii) The quality of a provider as determined by the Lead Agency through a quality rating and improvement system or other transparent system of quality indicators, if such information is available for the provider; and
      - (iii) Results of monitoring and inspection reports for child care providers, including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall post in a timely manner full monitoring and inspection reports, either in plain language or with a plain language summary, for parents and child care providers to understand. Such results shall include:
        - (A) Information on the date of such inspection;
        - (B) Information on corrective action taken by the State and child care provider, where applicable; and
        - (C) A minimum of 5 years of results, where available.
      - (iv) The number of serious injuries and deaths of children that occurred while in the care of the provider.
    - (3) Aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

(4) Referrals to local child care resource and referral organizations.

(5) Directions on how parents can contact the Lead Agency or its designee and other programs to help them understand information included on the website.

(b) **Certify that it will collect and disseminate**, through resource and referral organizations or other means as determined by the State, including, but not limited to, through the website at § 98.33(a), **to parents of eligible children and the general public**, and where applicable providers, information about:

(1) The availability of the full diversity of child care services **to promote informed parental choice**, including information about:

(i) the availability of child care services under this part and other programs for which families may be eligible, as well as the availability of financial assistance to obtain child care services;

(ii) Other programs for which families that receive assistance under this part may be eligible, including:

(A) Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*);

(B) Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*);

(C) Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*);

(D) Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*);

(E) Special supplemental nutrition program for women, infants, and children (42 U.S.C. 1786);

(F) Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766);

(G) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(iii) Programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*)

(iv) Research and best practices concerning children's development, and meaningful parent and family engagement, and physical health and development, particularly healthy eating and physical activity; and

(v) State policies regarding social-emotional behavioral health of children which may include positive behavioral health intervention and support models for birth to school-age or age-appropriate, and policies on suspension and expulsion of children birth to age five in **child care and other** early childhood programs, as described in the Plan pursuant to § 98.16(ee), receiving assistance under this part.

(c) Provide information on developmental screenings to parents as part of the intake process for families receiving assistance under this part, and to providers through training and **education**, including:

(1) Information on existing resources and services the State can **make available** in conducting developmental screenings and providing referrals to services when appropriate for **children** who receive assistance under this part, including the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 *et seq.*); and

(2) A description of how a family or eligible child care provider may utilize the resources and services described in **paragraph (c)(1) of this section** to obtain developmental screenings for children who receive assistance under this part who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(d) For families that receive assistance under this part, provide specific information about the child care provider selected by the parent, including health and safety requirements met by the provider pursuant to § 98.41, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any voluntary

quality standards met by the provider. Information must also describe how CCDF subsidies are designed to promote equal access in accordance with § 98.45, how to submit a complaint through the hotline at § 98.32(a), and how to contact local resource and referral agencies or other community-based supports that assist parents in finding and enrolling in quality child care.

(be) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to Sec. 98.11, other entities, and shall include:

- (1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;
- (2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:
  - (i) "Appropriate child care";
  - (ii) "Reasonable distance";
  - (iii) "Unsuitability of informal child care";
  - (iv) "Affordable child care arrangements";
- (3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (b) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act.

(ef) Include in the biennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (be) of this section.

#### **Sec. 98.34 Parental rights and responsibilities**

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

#### **Subpart E--Program Operations (Child Care Services) Lead Agency and Provider Requirements**

#### **Sec. 98.40 Compliance with applicable State and local regulatory requirements**

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is

provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

#### **Sec. 98.41 Health and safety requirements**

(a) ~~Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute,~~ Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services, for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, ~~States and Territories~~ Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, ~~or territorial, or tribal~~ public health agency.

(B) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(1) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles).

(2) Children who receive care in their own homes, ~~provided there are no other unrelated children who are cared for in the home.~~

(3) Children whose parents object to immunization on religious grounds.

(4) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children ~~experiencing homelessness~~ and children in foster care to receive services under this part while ~~providing~~ their families (including foster families) ~~a reasonable time to take~~ any necessary action to comply with immunization and other health and safety requirements.

(1) Any payment for such child during the grace period shall not be considered an error or improper payment under ~~subpart K of this part.~~

(2) The Lead Agency may also, at its option, establish grace periods for other children who are not ~~experiencing homelessness~~ or in foster care.

(3) Lead Agencies must coordinate with licensing agencies ~~and other relevant State and local agencies to~~ provide referrals and support to help ~~families~~ of children receiving services during a grace period comply with immunization and other health and safety requirements;

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, ~~including identification of and protection from hazards, bodies of water, and vehicular traffic;~~

(vi) Prevention of shaken baby syndrome and abusive head trauma;

(vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice



drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(ix) Appropriate precautions in transporting children, if applicable;

(x) First aid and cardiopulmonary resuscitation;

(xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement at paragraph (e) of this section; and

(xii) May include requirements relating to:

(A) Nutrition (including age-appropriate feeding);

(B) Access to physical activity;

(C) Caring for children with special needs; or

(D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

(b) Lead Agencies may not set health and safety standards and requirements ~~under other than those required in~~ paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified ~~in paragraph (e) of this section at § 98.42(c).~~

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to promoting the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

(1) Group size limits for specific age populations;

(2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and

(3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

#### **Sec. 98.42 Enforcement of licensing and health and safety requirements**

(a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in § 98.41 of this section.

(b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care providers and facilities eligible to deliver services for which assistance is provided under this part. The Lead Agency shall:

(1) Ensure individuals who are hired as licensing inspectors are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements

appropriate to provider setting and age of children served. Training shall include, but is not limited to, those requirements described in § 98.41, and all aspects of the State, Territory, or Tribe's licensure requirements;

(2) Require inspections of child care providers and facilities, performed by licensing inspectors (or qualified inspectors designated by the Lead Agency), as specified below:

(i) For licensed child care providers and facilities,

(A) Not less than one pre-licensure inspection for compliance with health, safety, and fire standards, and

(B) Not less than annually an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41) and fire standards (inspectors may inspect for compliance with all three standards at the same time); and

(ii) For license-exempt child care providers and facilities, an annual inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41), and fire standards;

(iii) Coordinate, to the extent practicable, monitoring efforts with other Federal, State, and local agencies that conduct similar inspections.

(iv) The Lead Agency may, at its option:

(A) Use differential monitoring or a risk-based approach to design annual inspections, provided that the contents covered during each monitoring visit is representative of the full complement of health and safety requirements;

(B) Develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting; and

(3) Ensure the ratio of licensing inspectors to such child care providers and facilities is maintained at a level sufficient to enable the State, Territory, or Tribe to conduct effective inspections on a timely basis in accordance with the applicable Federal, State, Territory, Tribal, and local law;

(4) Require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.

(c) For the purposes of this section and § 98.41, Lead Agencies may exclude grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, from the term "child care providers." If the Lead Agency chooses to exclude these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(1), of requirements, if any, that apply to these providers.

#### **Sec. 98.43 Criminal background checks**

(a)(1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:

(i) Requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

(ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and

(iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.

(2) In this section:



(i) Child care provider means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

(A) Is not an individual who is related to all children for whom child care services are provided; and

(B) Is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter; and

(ii) Child care staff member means an individual age 18 and older (other than an individual who is related to all children for whom child care services are provided):

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home age 18 and older.

(b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:

(i) State criminal registry or repository using fingerprints;

(ii) State sex offender registry or repository; and

(iii) State-based child abuse and neglect registry and database.

(c)(1) A child care staff member shall be ineligible for employment by child care providers of services for which assistance is made available in accordance with this part, if such individual:

(i) Refuses to consent to the criminal background check described in paragraph (b) of this section;

(ii) Knowingly makes a materially false statement in connection with such criminal background check;

(iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a felony consisting of—

(A) Murder, as described in section 1111 of title 18, United States Code;

(B) Child abuse or neglect;

(C) A crime against children, including child pornography;

(D) Spousal abuse;

(E) A crime involving rape or sexual assault;

(F) Kidnapping;

(G) Arson;

(H) Physical assault or battery; or

(I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

(2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.

(d)(1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory website described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.

(2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:

(i) Prior to the date an individual becomes a child care staff member of the provider; and

(ii) Not less than once during each 5-year period for any existing staff member.

(3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:

(i) The staff member received a background check described in paragraph (b) of this section:

(A) Within 5 years before the latest date on which such a submission may be made; and

(B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after the provider has submitted such a request if the staff member is supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within 5 years of the request.

(e)(1) Background check results. The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report; and

(iii) The appeals process is completed in a timely manner for each child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) The State or Territory must ensure that its policies and procedures under § 98.43, including the process by which a child care provider or other State may submit a background check request, are published in the website of the State or Territory as described in § 98.33(a) and the website of local lead agencies.

(h) (1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

#### **Sec. 98.44 Training and professional development**

(a) The Lead Agency must describe in the Plan the State or Territory framework for training, professional development, and postsecondary education for caregivers, teachers, and directors that:

(1) Is developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body;

(2) May engage training providers in aligning training opportunities with the State's framework;

(3) To the extent practicable, addresses professional standards and competencies, career pathways, advisory structure, articulation, and workforce information and financing;

(4) Establishes qualifications in accordance with § 98.41(d)(3) designed to enable child care providers that provide services for which assistance is provided in accordance with this part to promote the social, emotional, physical, and cognitive development of children and improve the knowledge and skills of caregivers, teachers and directors in working with children and their families;

(5) Is conducted on an ongoing basis, providing a progression of professional development (which may include encouraging the pursuit of postsecondary education);

(6) Reflects current research and best practices relating to the skills necessary for caregivers, teachers, and directors to meet the developmental needs of participating children and engage families; and

(7) Improves the quality, diversity, stability, and retention (including financial incentives) of caregivers, teachers, and directors.

(b) The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (*i.e.*, to be completed within three months) and ongoing professional development for

caregivers, teachers, and directors of child care providers of services for which assistance is provided under the CCDF that, to the extent practicable, align with the State framework:

(1) Accessible pre-service or orientation training in health and safety standards, addressing each of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and, at the Lead Agency option, § 98.41(a)(1)(xii), and child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning) appropriate to the age of children served;

(2) Ongoing, accessible professional development, aligned to a progression of professional development, including the minimum annual requirement for hours of training and professional development for eligible caregivers, teachers and directors that:

(i) Maintains and updates health and safety training standards described in Sec. 98.41(a)(1)(i) through (xi), and at the Lead Agency option, in § 98.41(a)(1) (xii);

(ii) Incorporates knowledge and application of the State's early learning and developmental guidelines for children birth to kindergarten (where applicable);

(iii) Incorporates social-emotional behavior intervention models for children birth through school-age, which may include positive behavior intervention and support models including preventing and reducing expulsions and suspensions of preschool-aged and school-aged children;

(iv) To the extent practicable, are appropriate for a population of children that includes:

(A) Different age groups;

(B) English learners;

(C) Children with developmental delays and disabilities; and

(D) Native Americans, including Indians, as the term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517));

(v) To the extent practicable, awards continuing education units or is credit-bearing; and

(vi) Shall be accessible to caregivers, teachers, and directors supported through Indian tribes or tribal organizations that receive assistance under this subchapter.

**Sec. 98.42 Sliding fee scales.**

~~(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.~~

~~(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.~~

~~(c) Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.~~

**Sec. 98.435 Equal access**

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide in the Plan a summary of the data and facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers, ~~e.g., center, group, family, and in-home care,~~ is made available;

- (2) How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology conducted in accordance with paragraph (c) of this section;
- (3) How base payment rates support health, safety, and quality in accordance with paragraphs (f)(1)(i) and (f)(2)(ii) of this section;
- (4) How payment rates provide parental choice for families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income;
- (5) How the Lead Agency took the cost of higher quality into account in accordance with paragraph (f)(2)(iii) of this section;  
~~a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan;~~
- (36) How copayments based on a sliding fee scale are affordable, as stipulated at paragraph (k) of this section;
- (7) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;
- (8) How and on what factors the Lead Agency differentiates payment rates; and
- (9) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access.
- (c) The Lead Agency shall demonstrate in the Plan that it has developed and conducted, not earlier than two years before the date of the submission of the Plan, either:
- (1) A statistically valid and reliable survey of the market rates for child care services (that also includes information on the extent to which child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices); or
- (2) An alternative methodology, such as a cost estimation model, that has been:
- (i) Proposed by the Lead Agency in accordance with uniform procedures and timeframes established by ACF; and
- (ii) Approved in advance by ACF.
- (d) The market rate survey or alternative methodology must reflect variations by geographic location, category of provider, and age of child.
- (e) Prior to conducting the market rate survey or alternative methodology, the Lead Agency must consult with:
- (1) The State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, local child care program administrators, local child care resource and referral agencies, and other appropriate entities; and
- (2) Organizations representing child care caregivers, teachers, and directors.
- (f) After conducting the market rate survey or alternative methodology, the Lead Agency must:
- (1) Prepare a detailed report containing the results, and make the report widely available, including by posting it on the Internet, not later than 30 days after the completion of the report.
- (i) The report must indicate the estimated price or cost of care necessary to support child care providers' implementation of the health, safety, and quality requirements at §§ 98.41 through 98.44, including any relevant variation by geographic location, category of provider, or age of child.
- (2) Set payment rates for CCDF assistance:



- (i) In accordance with the results of the most recent market rate survey or alternative methodology conducted pursuant to paragraph (c) of this section;
- (ii) With base payment rates established at least at a level sufficient to support implementation of health, safety and quality requirements in accordance with paragraph (f)(1)(i) of this section;
- (iii) That provides parental choice to families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income;
- (iv) Taking into consideration the cost of providing higher quality child care services; and
- (v) Without, to the extent practicable, reducing the number of families receiving CCDF assistance.

(ge) A Lead Agency may not establish different payment rates based on a family's eligibility status-, such as TANF status or circumstances.

(hd) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in § 98.30.

(ie) Nothing in this section shall be construed to create a private right of action if the Lead Agency acted in accordance with the Act and this part.

(j) Nothing in this part shall be construed to prevent a Lead Agency from differentiating payment rates on the basis of such factors as:

- (1) Geographic location of child care providers (such as location in an urban or rural area);
- (2) Age or particular needs of children (such as the needs of children with disabilities, children served by child protective services, and children experiencing homelessness);
- (3) Whether child care providers provide services during the weekend or other non-traditional hours; or
- (4) The Lead Agency's determination that such differential payment rates may enable a parent to choose high-quality child care that best fits the parents' needs.

(k) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF child care services that:

- (1) Helps families afford child care and enables choice of a range of child care options;
- (2) Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment;
- (3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part;
- (4) Allows for co-payments to be waived for families whose incomes are at or below the poverty level for a family of the same size, that have children who receive or need to receive protective services, or that meet other criteria established by the Lead Agency.

(l) Lead Agencies must have a policy that prohibits child care providers of services for which assistance is provided under the CCDF from charging parents additional mandatory fees above the family co-payment determined in accordance with the sliding fee scale.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices for CCDF child care providers that:

- (1) Ensure timeliness of payment by either:
  - (i) Paying prospectively prior to the delivery of services; or
  - (ii) Paying within no more than 21 days of the receipt of invoice for services.

(2) To the extent practicable, support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. A Lead Agency must describe its approach in the State Plan, including justification for an alternative approach that is not one of the following:

- (i) Paying based on a child's enrollment rather than attendance;
- (ii) Providing full payment if a child attends at least 85 percent of the authorized time; or
- (iii) Providing full payment if a child is absent for five or fewer days in a month.
- (3) Reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency provides evidence that such practices are not generally-accepted in the State or service area):
  - (i) Paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and
  - (ii) Paying for mandatory fees that the provider charges to private-paying parents, such as fees for registration;
- (4) Ensure child care providers receive payment for any services in accordance with a payment agreement or authorization for services;
- (5) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment;
- (6) Include timely appeal and resolution processes for any payment inaccuracies and disputes.

#### **Sec. 98.46** Priority for child care services

- (a) Lead Agencies shall give priority for services provided under § 98.50(a) to:
- (1)(a)- Children of families with very low family income (considering family size); and
  - (2) (b)- Children with special needs, which may include other any vulnerable populations as defined by the Lead Agency; and
  - (3) Children experiencing homelessness.

(b) Lead Agencies shall prioritize increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

#### **Sec. 98.457** List of Providers

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

#### **Sec. 98.468** Nondiscrimination in admissions on the basis of religion

- (a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.
- (b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.
- (c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,
- (1) The grant or contract relating to the assistance, or



(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

**Sec. 98.479 Nondiscrimination in employment on the basis of religion**

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a)(1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

**Subpart F--Use of Child Care and Development Funds**

**Sec. 98.50 Child care services**

~~(a) Of the funds remaining after applying the provisions of paragraphs (c), (d) and (e) of this section the Lead Agency shall spend a substantial portion funds to provide direct child care services to low income working families.~~

~~(a)~~ **(b)** Direct child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.4245(k);

(3) Using funding methods provided for in § 98.30 which must include some use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of shortages in the supply of high quality care described in the Plan pursuant to § 98.16(i)(1) and other factors as determined by the Lead Agency; and

(4) Based on the priorities in § 98.46.

~~(b)~~ Of the aggregate amount of funds expended (*i.e.*, Discretionary, Mandatory, and Federal and State share of Matching Funds),

~~(1)~~ No less than seven percent in fiscal years 2016 and 2017, eight percent in fiscal years 2018 and 2019, and nine percent in fiscal year 2020 and each succeeding fiscal year ~~four percent~~ shall

be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53, and

(2) No less than three percent in fiscal year 2017 and each succeeding fiscal year shall be used to carry out activities at §98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the Lead Agency from reserving a larger percentage of funds to carry out activities described in paragraphs (b)(1) and (2) of this section.

(c) Funds expended from each fiscal year's allotment on quality activities pursuant to paragraph (b) of this section:

(1) Must be in alignment with an assessment of the Lead Agency's need to carry out such services and care as required at § 98.53(a);

(2) Must include measurable indicators of progress in accordance with § 98.53(f); and

(3) May be provided directly by the Lead Agency or through grants or contracts with local child care resource and referral organizations or other appropriate entities.

(d) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.542.

(e) Not less than 70 percent of the Mandatory and Federal and State share of Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act;

(2) Are attempting through work activities to transition off such assistance program; and

(3) Are at risk of becoming dependent on such assistance program.

(f) From Discretionary amounts provided for a fiscal year, the Lead Agency shall:

(1) Reserve the minimum amount required under paragraph (b) of this section for quality activities, and the funds for administrative costs described at paragraph (d) of this section; and

(2) From the remainder, use not less than 70 percent to fund direct services (provided by the Lead Agency).

(g) Of the funds remaining after applying the provisions of paragraphs (a) through (f) of this section the Lead Agency shall spend a substantial portion funds to provide direct child care services to low-income families who are working or attending training or education.

(h) Pursuant to § 98.16(i)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

**Sec. 98.51 Services for children experiencing homelessness.**

Lead Agencies shall expend funds on activities that improve access to quality child care services for children experiencing homelessness, including:

(a) The use of procedures to permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained;

(1) If, after full documentation is provided, a family experiencing homelessness is found ineligible.

(i) The Lead Agency shall pay any amount owed to a child care provider for services provided as a result of the initial eligibility determination.

- (ii) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part; and
- (b) Training and technical assistance for providers and appropriate Lead Agency (or designated entity) staff on identifying and serving children experiencing homelessness and their families; and
- (c) Specific outreach to families experiencing homelessness.

**Sec. 98.52 Child care resource and referral system**

- (a) A Lead Agency may expend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.
- (b) If a Lead Agency uses funds as described in paragraph (a) of this section, the local or regional child care resource and referral organizations supported shall, at the direction of the Lead Agency:
  - (1) Provide parents in the State with consumer education information referred to in § 98.33 (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;
  - (2) To the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in paragraph (b)(1) of this section, to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the Lead Agency);
  - (3) Collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431, et seq.), for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));
  - (4) Collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;
  - (5) Work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and
  - (6) As appropriate, coordinate their activities with the activities of the State Lead Agency and local agencies that administer funds made available in accordance with this part.

**Sec. 98.513 Activities to improve the quality of child care**

- (a) ~~No less than four percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities. The Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to § 98.50(b) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the following quality activities to increase the number of low-income children in high-quality child care:~~
  - (1) These activities may include but are not limited to: (1) Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development through activities such as those included at § 98.44, in addition to:
    - (i) Offering training, professional development, and postsecondary education opportunities for child care caregivers, teachers and directors that:

- (A) Relate to the use of scientifically-based, developmentally-appropriate, culturally-appropriate, and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity, and
- (B) Offer specialized training, professional development, and postsecondary education for caregivers, teachers and directors caring for those populations prioritized at § 98.44(b)(2)(iv), and children with disabilities;
- (ii) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education;
- (iii) Including effective behavior management strategies and training, including positive behavior interventions and support models for birth to school-age or age-appropriate, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors;
- (iv) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;
- (v) Providing training corresponding to the nutritional and physical activity needs of children to promote healthy development;
- (vi) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and
- (vii) Connecting child care caregivers, teachers, and directors with available Federal and State financial aid, or other resources, that would assist these individuals in pursuing relevant postsecondary education, such as programs providing scholarships and compensation improvements for education attainment and retention.
- (2) Improving upon the development or implementation of the early learning and development guidelines at § 98.15(a)(9) by providing technical assistance to eligible child care providers in order to enhance the cognitive, physical, social, and emotional development and overall well-being of participating children.
- (3) Developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services to meet consumer education requirements at § 98.33, which may:
  - (i) Support and assess the quality of child care providers in the State, Territory, or Tribe;
  - (ii) Build on licensing standards and other regulatory standards for such providers;
  - (iii) Be designed to improve the quality of different types of child care providers and services;
  - (iv) Describe the safety of child care facilities;
  - (v) Build the capacity of early childhood programs and communities to promote parents' and families' understanding of the early childhood system and the ratings of the program in which the child is enrolled;
  - (vi) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and
  - (vii) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development.
- (4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include:
  - (i) Establishing or expanding high-quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families

and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;  
(ii) Establishing or expanding the operation of community or neighborhood-based family child care networks;  
(iii) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through, but not limited to:  
(A) Training and professional development for caregivers, teachers and directors, including coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and  
(B) Improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*);  
(iv) If applicable, developing infant and toddler components within the Lead Agency's quality rating and improvement system described in paragraph (a)(3) of this section for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;  
(v) Improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care as described at § 98.33; and  
(vi) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers.  
(5) Establishing or expanding a statewide system of child care resource and referral services.  
(6) Facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.  
(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.  
(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.  
(9) Supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.  
(10) Carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

(b) Pursuant to § 98.16(hj), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.553(c) (*i.e.*, the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

(d) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(e) Unless expressly authorized by law, targeted funds for quality improvement and other set-asides that may be included in appropriations law may not be used towards meeting the quality expenditure minimum requirement at § 98.50(b).



(f) States shall annually prepare and submit reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available and shall include:  
(1) An assurance that the State was in compliance with requirements at §98.50(b) in the preceding fiscal year and information about the amount of funds reserved for that purpose;  
(2) A description of the activities carried out under this section to comply with §98.50(b);  
(3) The measures the State will use to evaluate its progress in improving the quality of child care programs and services in the State, and data on the extent to which the State had met these measures; and  
(4) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children receiving assistance under this part, and in other regulated and unregulated child care centers and family child care homes, to the extent possible.

**Sec. 98.542 Administrative costs**

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.535(b), shall be expended for administrative activities. These activities may include but are not limited to:

- (1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:
  - (i) Planning, developing, and designing the Child Care and Development Fund program;
  - (ii) Providing local officials and the public with information about the program, including the conduct of public hearings;
  - (iii) Preparing the application and Plan;
  - (iv) Developing agreements with administering agencies in order to carry out program activities;
  - (v) Monitoring program activities for compliance with program requirements;
  - (vi) Preparing reports and other documents related to the program for submission to the Secretary;
  - (vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;
  - (viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before-and after-school care programs;
  - (ix) Coordinating the resolution of audit and monitoring findings;
  - (x) Evaluating program results; and
  - (xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;
- (2) Travel costs incurred for official business in carrying out the program;
- (3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;
- (4) Audit services as required at § 98.65;
- (5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and
- (6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57.

(b) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

- (1) Establishment and maintenance of computerized child care information systems;
- (2) Establishing and operating a certificate program;
- (3) Eligibility determination and re-determination;
- (4) Preparation / participation in judicial hearings;



- (5) Child care placement;
- (6) Recruitment, licensing, inspection of child care providers;
- (7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program;
- (8) Reviews and supervision of child care placements;
- (9) Activities associated with payment rate setting;
- (10) Resource and referral services; and
- (11) Training for child care staff.

(~~cb~~) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(~~de~~) Non-Federal expenditures required by § 98.535(c) (*i.e.*, the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described in this section shall be counted towards the five percent limit.

#### **Sec. 98.53 Matching fund requirements**

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched at the Federal medical assistance rate for the applicable fiscal year for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

- (ii) Do not revert to the donor's facility or use;
- (iii) Are not used to match other Federal funds;
- (iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to § 98.53~~5~~(f) (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and
- (v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this ~~subsection~~. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16~~(e)~~(2).

(g) The following are not counted as an eligible State expenditure under this Part:

- (1) In-kind contributions; and
- (2) Family contributions to the cost of care as required by § 98.42~~5~~(k).

(h) Public pre-kindergarten (pre-K) expenditures:

- (1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and
- (2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16~~(e)~~(w), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.
- (3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to draw down the State's full allotment of Federal matching funds available under this subsection.
- (4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(3).

#### **Sec. 98.56~~4~~ Restrictions on the use of funds**

(a) General. (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) Construction. (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers

meet State and local child care standards, including applicable health and safety requirements. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.  
(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction and renovation.

(c) Tuition. Funds may not be expended for students enrolled in grades 1 through 12 for:

- (1) Any service provided to such students during the regular school day;
- (2) Any service for which such students receive academic credit toward graduation; or
- (3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) *Sectarian purposes and activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2, a Assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs, unless explicitly authorized by statute.

#### **Sec. 98.575 Cost allocation**

- (a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.
- (b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.
- (c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

### **Subpart G--Financial Management**

#### **Sec. 98.60 Availability of funds**

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

- (1) Discretionary Funds are available to States, Territories, and Tribes,
- (2) Mandatory and Matching Funds are available to States;
- (3) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget, the Secretary:

- (1) May withhold ~~no more than one quarter of one percent a portion~~ of the CCDF funds made available for a fiscal year for the provision of technical assistance, for research, evaluation, and demonstration, and for a national toll-free hotline and website;
- (2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)(i) Mandatory Funds for States requesting Matching Funds per ~~See. § 98.535~~ shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Except for paragraph (d)(5) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR ~~92.375.2~~, Expenditures and Obligations ~~and Outlays (expenditures)~~.

(5) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors.:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(6) In instances where the Lead Agency issues child care certificates ~~For purposes of the CCDF~~, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(7) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

(78) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,

- (1) if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or
- (2) if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.

(h) Repayment of loans, made to child care providers as part of a quality improvement activity pursuant to ~~Sec. § 98.513(a)(2)(ii)~~, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

#### **Sec. 98.61 Allotments from the Discretionary Fund**

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to Sec. 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act.

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor--the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor--determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(1) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(2) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year. (C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(1) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(2) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

[GRAPHIC] [TIFF OMITTED]

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "YCF" means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "APF" means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims

Settlement Act (43 U.S.C. 1601 *et seq*) ~~an amount up to~~ not less than two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph

(c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to Sec. 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to Sec. 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to Sec. 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to \$2,000,000 may be reserved from the tribal funds reserved at paragraph (c) of this section. From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the Federal Register.

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

#### **Sec. 98.62 Allotments from the Mandatory Fund**

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to Sec. 98.60(b)(1) and the amount reserved for Tribes pursuant to paragraph (b) of this section, an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under subsections (g) and (i) of section 402 of the Social Security Act (as in effect before October 1, 1995) for fiscal year 1994 or 1995

(whichever is greater); or



(2) the average of the Federal share of its child care expenditures under the subsections referred to in subparagraph (a)(1) of this section for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations up to 2 percent of the amount appropriated under section 418(a)(3) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

(1) The Metlakatla Indian Community of the Annette Islands Reserve;

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to Sec. 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of Indian children in each Tribe's service area pursuant to Sec. 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

#### **Sec. 98.63 Allotments from the Matching Fund**

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this subsection, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under ~~See. §~~ 98.60(b)(1) for technical assistance, research and evaluation, and the national toll-free hotline and website and under ~~See. §~~ 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this subsection are available pursuant to the requirements at ~~See. §~~ 98.535(c).

#### **Sec. 98.64 Reallotment and redistribution of funds**

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Funds granted to the Territories are not subject to reallotment. Any funds granted to the Territories that are returned after they have been allotted will revert to the Federal government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term "State" means the

50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallocated State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallocation reports submitted by States, the Secretary will reallocate funds.

(i) If the total amount available for reallocation is \$25,000 or more, funds will be reallocated to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to Sec. 98.61(a).

(ii) If the amount available for reallocation is less than \$25,000, the Secretary will not reallocate any funds, and such funds will revert to the Federal government.

(iii) If an individual reallocation amount to a State is less than \$500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallocation report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallocation; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallocation shall revert to the Federal government.

(4) States receiving reallocated funds shall obligate and expend these funds in accordance with Sec. 98.60. The reallocation of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of ~~See. § 98.535~~(c) in the period for which the grant was first made. For purposes of this paragraph (c)(1), the term "State" means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under Sec. 98.63(a), but not granted, shall also be redistributed in the manner described in paragraph (1) of this section.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(4) A State eligible to receive redistributed Matching Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallocated to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallocated tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by a deadline established by the Secretary.

- (2) Based upon the reallocation reports submitted by Tribes, the Secretary will reallocate Tribal Discretionary Funds among the other Tribes.
- (i) If the total amount available for reallocation is \$25,000 or more, funds will be reallocated to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to Sec. 98.62(c).
- (ii) If the total amount available for reallocation is less than \$25,000, the Secretary will not reallocate any funds, and such funds will revert to the Federal government.
- (iii) If an individual reallocation amount to an applicant Tribe is less than \$500, the Secretary will not issue the award, and such funds will revert to the Federal government.
- (3) If a Tribe does not submit a reallocation report by the deadline for report submittal, either:
- (i) The Secretary will determine that Tribe does not have any funds available for reallocation; or
- (ii) In the case of a report received after the deadline established by the Secretary, any funds reported to be available for reallocation shall revert to the Federal government.
- (4) Tribes receiving reallocated funds shall obligate and expend these funds in accordance with Sec. 98.60. The reallocation of funds does not extend the obligation period or the program period for expenditure of such funds.

#### **Sec. 98.65 Audits and financial reporting**

- (a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with ~~OMB Circular A-133~~ 45 CFR part 75 subpart F, and the Single Audit Act Amendments of 1996.
- (b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.
- (c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.
- (d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.
- (e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.
- (f) The audit required in paragraph (a) of this section shall be conducted by an agency that is independent of the State, Territory or Tribe as defined by generally accepted government auditing standards issued by the Comptroller General, or a public accountant who meets such independent standards.
- (g) ~~The Secretary shall require financial reports as necessary.~~ Lead Agencies shall submit financial reports, in a manner specified by ACF, quarterly for each fiscal year until funds are expended.
- (h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes reallocated funding and any funds transferred from the TANF block grant), Mandatory, and Matching funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) funds:
- (1) Child care administration;
- (2) Quality activities, including any sub-categories of quality activities as required by ACF;
- (3) Direct services;
- (4) Non-direct services, including:
- (i) Establishment and maintenance of computerized child care information systems,

- (ii) Certificate program cost / eligibility determination;
- (iii) All other non-direct services; and
- (5) Such other information as specified by the Secretary.
- (i) Tribal Lead Agencies shall submit financial reports annually in a manner specified by ACF.

#### **Sec. 98.66 Disallowance procedures**

- (a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.
- (b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.
- (c)(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or
- (2) The Lead Agency may appeal the finding:
  - (i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or
  - (ii) By following the procedure in paragraph (d) of this section.
- (d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.
- (e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.
- (f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:
  - (1) The amount of the disallowance;
  - (2) The Lead Agency's reasons for believing that the disallowance was improper; and
  - (3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.
- (g)(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.
- (2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.
- (3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.
- (h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.
- (i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to Sec. 98.90, the findings of which have been appealed by the Lead Agency.
- (j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

#### **Sec. 98.67 Fiscal requirements**

- (a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.
- (b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

- (1) Preparation of reports required by the Secretary under this subpart and under subpart H; and
- (2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

**Sec. 98.68 Program integrity**

(a) Lead Agencies are required to describe in their Plan effective internal controls that are in place to ensure integrity and accountability in the CCDF program. These shall include:

- (1) Processes to ensure sound fiscal management;
- (2) Processes to identify areas of risk; and
- (3) Regular evaluation of internal control activities.

(b) Lead Agencies are required to describe in their Plan the processes that are in place to:

- (1) Identify fraud or other program violations, which may include, but are not limited to the following:
  - (i) Record matching and database linkages;
  - (ii) Review of attendance and billing records;
  - (iii) Quality control or quality assurance reviews; and
  - (iv) Staff training on monitoring and audit processes.
- (2) Investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

(c) Lead Agencies must describe in their Plan the procedures that are in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination and re-determination. Because a child meeting eligibility requirements at the most recent eligibility determination or re-determination is considered eligible during the period between re-determinations as described in § 98.21(a)(1):

- (1) The Lead Agency shall pay any amount owed to a child care provider for services provided for such a child during this period under a payment agreement or authorization for services; and
- (2) Any CCDF payment made for such a child during this period shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances, as set forth at § 98.21(a).

**Subpart H--Program Reporting Requirements**

**Sec. 98.70 Reporting requirements**

(a) Quarterly Case-level Report--

- (1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly case-level report of monthly family case-level data. Data shall be collected monthly and submitted quarterly. States may submit the data monthly if they choose to do so.
- (2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than August 31, 1998, and quarterly thereafter. The first report shall include data from the third quarter of FFY 1998 (April 1998 through June 1998). States and Territorial Lead Agencies which choose to submit case-level data monthly must submit their report for April 1998 no later than July 30, 1998. Following reports must be submitted every thirty days thereafter.
- (3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report.



States are not prohibited from submitting case-level data for the entire population receiving CCDF services.

(4) Quarterly family case-level reports to the Secretary shall include the information listed in Sec. 98.71(a).

(b) Annual Report--(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report. The report shall be submitted, in a manner specified by the Secretary, by December 31 of each year and shall cover the most recent federal fiscal year (October through September).

(2) The first annual aggregate report shall be submitted no later than December 31, 1997, and every twelve months thereafter.

(3) Biennial reports to Congress by the Secretary shall include the information listed in Sec. 98.71(b).

(c) Tribal Annual Report--

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual aggregate report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Biennial reports to Congress by the Secretary shall include the information listed in Sec. 98.71(c).

#### **Sec. 98.71 Content of reports**

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in Sec. 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) The total monthly family income and family size used for determining eligibility;

(2) County Zip code of residence of the family and zip code of the location of the child care provider;

(3) Gender and month/year of birth of children;

(4) Ethnicity and race of children;

(5) Whether the head of the family is a single parent;

(6) The sources of family income, from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act, cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977; and other assistance programs;

(7) The month/year child care assistance to the family started;

(8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care);

(9) Whether the child care provider involved was a relative;

(10) The total monthly child care copayment by the family;

(11) The total expected dollar amount per month to be received by the provider for each child;

(12) The total hours per month of such care;

(13) Social Security Number Unique identifier of the head of the family unit receiving child care assistance, and of the child care provider;

(14) Reasons for receiving care;



- (15) Whether the family is experiencing homelessness;
- (16) Whether the parent(s) are in the military service;
- (17) Whether the child has a disability;
- (18) Primary language spoken at home;
- (19) Date of the child care provider's most recent health, safety and fire inspection meeting the requirements of § 98.42(b)(2);
- (20) Indicator of the quality of the child care provider; and;
- (15)(21) Any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in Sec. 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

- (1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;
- (2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);
- (3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;
- (4) The total number (without duplication) of children and families served under CCDF;
- (5) The number of child fatalities by type of care; and
- (56) Any additional information that the Secretary shall require.

(c) ~~At a minimum, a~~ A Tribal Lead Agency's annual report ~~to the Secretary~~, as required in § 98.70(c), shall include such information as the Secretary shall require. ~~the following information on services provided through all CCDF tribal grant awards:~~

- ~~(1) Unduplicated number of families and children receiving services;~~
- ~~(2) Children served by age;~~
- ~~(3) Children served by reason for care;~~
- ~~(4) Children served by payment method (certificate/voucher or contract/grants);~~
- ~~(5) Average number of hours of care provided per week;~~
- ~~(6) Average hourly/monthly amount paid for care;~~
- ~~(7) Children served by level of family income; and~~
- ~~(8) Children served by type of child care providers.~~

## **Subpart I--Indian Tribes**

### **Sec. 98.80 General procedures and requirements**

An Indian Tribe or tribal organization (as described in Subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

- (a) An Indian Tribe applying for or receiving CCDF funds shall be subject to ~~all~~ the requirements under this part as specified in this section based on the size of the awarded funds. The Secretary shall establish thresholds for Tribes' total CCDF allotments pursuant to §§ 98.61(c) and 98.62(b) to be divided into three categories:

- (1) Large allocations.
- (2) Medium allocations; and
- (3) Small allocations.

(b) An Indian Tribe applying for or receiving CCDF funds shall:

- (1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and
- (2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

- (1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium; ~~and~~
- (2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age; ~~and~~
- (3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and
- (4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

~~(f) In determining eligibility for services pursuant to Sec. 98.20(a)(2), a tribal program may use either:~~

- ~~(1) 85 percent of the State median income for a family of the same size; or~~
- ~~(2) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.~~

#### **Sec. 98.81 Application and Plan procedures**

(a) In order to receive CCDF funds, a Tribal Lead Agency shall apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

(b) Tribal Lead Agencies with large and medium allocations ~~A Tribal Lead Agency~~ shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility.

(i) If the Tribe's median income is below a certain level established by the Secretary, then, at the Tribe's option, any Indian child in the Tribe's service area shall be considered eligible to receive CCDF funds, regardless of the family's income, work, or training status.

(ii) If the Tribe's median income is above the level established by the Secretary, then a tribal program must determine eligibility for services pursuant to § 98.20(a)(2). A tribal program, as specified in its Plan, may use either:

(A) 85 percent of the State median income for a family of the same size; or

(B) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

(2) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(3) The Tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to § 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to § 98.83(b).

(4) The Plan shall include any information, as prescribed by the Secretary, necessary for determining the number of children in accordance with §§ 98.61(c), 98.62(c), and 98.80(b)(1).

(5) The Plan shall include a description of the Tribe's payment rates, how they are established, and how they support quality including, where applicable, cultural and linguistic appropriateness.

(5) Plans for those Tribes specified at Sec. 98.83(f) (i.e., Tribes with small grants) are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) A description of any limits established for the provision of in-home care at Sec. 98.16(i)(2), or

(ii) A description of the child care certificate payment system(s) at Sec. 98.16(m).

(6) The Plan is not subject to the following requirements:

(i) A definition of very low income at § 98.16(g)(8);

(ii) A description at § 98.16 (i)(4) of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(iii) The description of the market rate survey or alternative methodology at § 98.16(r);

(iv) The licensing requirements applicable to child care services at § 98.15(b)(6); and

(v) The early learning and developmental guidelines requirement at § 98.15(a)(9).

(6) The Plan is not subject to requirements in § 98.16(f)(8) or § 98.16(g)(4).

(7) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to § 98.80(b)(2).

(8) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to § 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to § 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at § 98.80(c)(4).

(9) Plans for Tribal Lead Agencies with medium allocations are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) The assurance at § 98.15(a)(2) regarding options for services;

(ii) A description of any limits established for the provision of in-home care at § 98.16(i)(2), or

(iii) A description of the child care certificate payment system(s) at § 98.16(q).

(c) Tribal Lead Agencies with small allocations shall submit an abbreviated CCDF Plan, as described by the Secretary.

~~(ee) When initially applying under paragraph (a) of this section, a Tribal Lead Agency shall include a Plan that meets the provisions of this part and shall be for a twothree year period, pursuant to § Sec. 98.17(a).~~

#### **Sec. 98.82 Coordination**

(a) Tribal applicants shall coordinate ~~the development of the Plan and the provision of services~~ as required by §§ 98.12 and 98.14 and:

~~(1a)~~ To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

~~(2b)~~ With other Federal, State, local, and tribal child care and childhood development programs.

#### **Sec. 98.83 Requirements for tribal programs**

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities for the benefit of Indian children shall be carried out on or near an Indian reservation. ~~for the benefit of Indian children.~~

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their ~~three-two~~ year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (e.g., Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (e.g. Tribal Mandatory Funds).

(4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d)~~(1)~~ Tribal Lead Agencies shall not be subject to ~~the requirements at §§ 98.41(a)(1)(i); 98.44(a); 98.50(e); 98.52(a); 98.53 and 98.63.;~~

(i) The requirement to have licensing applicable to child care services at § 98.40;

(ii) The requirement to produce a consumer education website at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (e), but may do so using methods other than a website;

(iii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a);

(iv) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(v) The requirement to use some grants or contracts for the provision of direct services at § 98.50(a)(3);

(vi) The requirement for a training and professional development framework at § 98.44(a);

(vii) The requirements about Mandatory and Matching Funds at § 98.50(e);

(viii) The requirement to complete the quality progress report at § 98.53(f);

(ix) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(x) The Matching fund requirements at §§ 98.55 and 98.63.

(2) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the provision at § 98.42(b)(2) to require inspections of child care providers and facilities, unless a Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

(3) Tribal Lead agencies with large, medium, and small allocations shall be subject to the requirement at 98.43(a)(2)(ii)(C) to conduct comprehensive criminal background checks on other individuals residing in a family child care home, unless the Tribal Lead Agency describes an alternative background check approach for such individuals in its Plan and provides adequate justification for the approach.

(f) Tribal Lead Agencies whose total CCDF allotment pursuant to Sec. 98.61(e) and 98.62(b) is less than an amount established by the Secretary Tribal Lead Agencies with medium and small allocations shall not be subject to the following requirements:

the (1) The assurance at Sec. 98.15(a)(2);

(2) The requirement for certificates at § 98.30(a) and (d); and

(3) The requirements for quality expenditures at § 98.51(a).

(f) Tribal Lead Agencies with small allocations must spend their CCDF funds in alignment with the goals and purposes described in § 98.1. These Tribes shall have flexibility in how they spend their CCDF funds and shall be subject to the following requirements:

(1) If providing direct services:

(i) The health and safety requirements described in § 98.41;

(ii) The monitoring requirements at §§ 98.42 and 98.83(d)(2); and

(iii) The background checks requirements described in §§ 98.43 and 98.83(d)(3);

(2) The requirements to spend funds on activities to improve the quality of child care described in §§ 98.50(b) and 98.53;

(3) The use of funds requirements at § 98.56 and cost allocation requirement at § 98.57;

(4) The financial management requirements at subpart G of this part that are applicable to Tribes;

(5) The reporting requirements at subpart H of this part that are applicable to Tribes;

(6) The 15 percent limitation on administrative activities at § 98.83(h);

(7) The monitoring, non-compliance, and complaint provisions at subpart J of this part; and

(8) Any other requirement established by the Secretary.

(eg) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (gh) of this section or the quality expenditure requirement at § 98.543(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(gh) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under § 98.83 paragraph (eg) of this section) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(hi)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (hi)(1) of this section is subject to the actual availability of the appropriation.

## **Sec. 98.84 Construction and renovation of child care facilities**



(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year. The Secretary shall waive this requirement if:

(i) The Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(ii) The Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed:

(A) The level of direct child care services will increase; or

(B) The quality of child care services will improve.

(c)(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR ~~92.34~~75.318;

(2) Transfer and disposition of property requirements at 45 CFR ~~92.34(e)~~75.318(c);

(3) Title requirements at 45 CFR ~~92.34(a)~~75.318(a);

(4) Cost principles and allowable cost requirements at ~~45 CFR 92.22~~ subpart E of this part;

(5) Program income requirements at 45 CFR ~~92.25~~75.307;

(6) Procurement procedures at 45 CFR ~~92.36; 75.326 through 75.335~~ and;

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.



(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

- (1) planning costs as allowed at § 98.84(c);
- (2) labor, materials and services necessary for the functioning of the facility; and
- (3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

### **Subpart J--Monitoring, Non-compliance and Complaints**

#### **Sec. 98.90 Monitoring**

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

- (1) The Act;
- (2) The provisions of this part; and
- (3) The provisions and requirements set forth in the CCDF Plan approved under Sec. 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) Length of retention period. (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to Sec. 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall

be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

#### **Sec. 98.91 Non-compliance**

(a) If after reasonable notice to a Lead Agency, pursuant to Sec. 98.90 or Sec. 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under Sec. 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in Sec. 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to Sec. 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to Sec. 98.92.

#### **Sec. 98.92 Penalties and sanctions**

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow ~~the any~~ improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)(i) A penalty of not more than four percent of the funds allotted under Sec. 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to implement a provision of the Act, these regulations, or the Plan required under Sec. 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; or

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(3)(i) A penalty of not more than five percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.46(a);

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty;

(iii) This penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure; and

(iv) The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

(4) (i) A penalty of not more than five percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the State, Territory or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43;

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty; and

(iii) This penalty will not be applied if the State, Territory or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to Sec. 98.91.

(d) Nothing in this section, or in Sec. 98.90 or Sec. 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in Sec. Sec. 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b) of this section.

### **Sec. 98.93 Complaints**

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families, ~~370 L'Enfant Promenade, SW., Washington, DC 20447~~. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in Sec. 98.90.

### **Subpart K--Error Rate Reporting**

Source: 72 FR 50898, Sept. 5, 2007, unless otherwise noted.

### **Sec. 98.100 Error Rate Report**

(a) Applicability--The requirements of this subpart apply to the fifty States, the District of Columbia and Puerto Rico.

(b) Generally--States, the District of Columbia and Puerto Rico shall calculate, prepare and submit to the Department, a report of errors occurring in the administration of CCDF grant funds, at times and in a manner specified by the Secretary in instructions. States, the

District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); the average amount of improper payment; and the estimated annual amount of improper payments. The report also will provide strategies for reducing their error rates and allow States, the District of Columbia and Puerto Rico to set target error rates for the next cycle.

(c) Error Defined--For purposes of this subpart, an "error" shall mean any violation or misapplication of statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds, regardless of whether such violation results in an improper payment.

(d) Improper Payment Defined--For purposes of this subpart, "improper payment."

(1) Means any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds; and

(2) Includes any payment of CCDF grant funds to an ineligible recipient, any payment of CCDF grant funds for an ineligible service, any duplicate payment of CCDF grant funds and payments of CCDF grant funds for services not received. Because a child meeting eligibility requirements at the most recent eligibility determination or re-determination is considered eligible between re-determinations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a).

(e) Costs of Preparing the Error Rate Report--Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to ~~Section §~~ 98.524(a).

### **Sec. 98.101 Case Review Methodology**

(a) Case Reviews and Sampling--In preparing the error reports required by this subpart, States, the District of Columbia and Puerto Rico shall conduct comprehensive reviews of case records using a methodology established by the Secretary. For purposes of the case reviews, States, the District of Columbia and Puerto Rico shall select a random sample of case records which is estimated to achieve the calculation of an estimated annual amount of improper payments with a 90 percent confidence interval of  $\pm 5.0$  percent.

(b) Methodology and Forms--States, the District of Columbia and Puerto Rico must prepare and submit forms issued by the Secretary, following the accompanying instructions setting forth the methodology to be used in conducting case reviews and calculating the error rates.

(c) Reporting Frequency and Cycle--States, the District of Columbia and Puerto Rico shall conduct case reviews and submit error rate reports to the Department according to a staggered three-year cycle established by the Secretary such that each State, the District of Columbia, and Puerto Rico will be selected once, and only once, in every three years.

(d) Access to Federal Staff--States, the District of Columbia and Puerto Rico must provide access to Federal staff to participate and provide oversight in case reviews and error rate calculations, including access to forms related to determining error rates.

(e) Record Retention--Records pertinent to the case reviews and submission of error rate reports shall be retained for a period of five years from the date of submission of the applicable error rate

report or, if the error rate report was revised, from the date of submission of the revision. Records must be made available to Federal staff upon request.

**Sec. 98.102 Content of Error Rate Reports**

(a) Baseline Submission Report--At a minimum, States, the District of Columbia and Puerto Rico shall submit an initial error rate report to the Department, as required in Sec. 98.100, which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

- (1) Percentage of cases with an error (regardless of whether such error resulted in an over or under payment), expressed as the total number of cases in the sample with an error compared to the total number of cases in the sample;
- (2) Percentage of cases with an improper payment (both over and under payments), expressed as the total number of cases in the sample with an improper payment compared to the total number of cases in the sample;
- (3) Percentage of improper payments (both over and under payments), expressed as the total dollar amount of improper payments in the sample compared to the total dollar amount of payments made in the sample;
- (4) Average amount of improper payments (gross over and under payments, divided by the total number of cases in the sample that had an improper payment (both over and under payments));
- (5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period;
- (6) For each category of data listed above, targets for errors and improper payments in the next reporting cycle;
- (7) Summary of methodology used to arrive at estimate, including fieldwork preparation, sample generation, record review and error rate computation processes;
- (8) Discussion of the causes of improper payments identified and actions that will be taken to correct those causes in order to reduce the error rates;
- (9) Description of the information systems and other infrastructure that assist the State, the District of Columbia and Puerto Rico in identifying and reducing improper payments, or if the State, the District of Columbia or Puerto Rico does not have these tools, a description of actions that will be taken to acquire the necessary information systems and other infrastructure; and
- (10) Such other information as specified by the Secretary.

(b) Standard Report--At a minimum, the State, the District of Columbia and Puerto Rico shall submit an error rate report to the Department, as required in Sec. 98.100, made subsequent to the baseline submission report as set forth in Sec. 98.102(a) which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

- (1) All the information reported in the baseline submission, as set forth in Sec. 98.102(a), updated for the current cycle;
- (2) For each category of data listed in Sec. 98.102(a)(1) through (5), States, the District of Columbia and Puerto Rico must include data and targets from the prior cycle in addition to data from the current cycle and targets for the next cycle;

- (3) Description of whether the State, the District of Columbia or Puerto Rico met error rate targets set in the prior cycle and, if not, an explanation of why not;
- (4) Discussion of the causes of improper payments identified in the prior cycle and actions that were taken to correct those causes, in addition to a discussion on the causes of improper payments identified in the current cycle and actions that will be taken to correct those causes in order to reduce the error rates; and
- (5) Such other information as specified by the Secretary.

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action;

(iii) A timeline for completing each action within 1 year of the Assistant Secretary's approval of the plan, and for reducing the improper payment rate below the threshold established by the Secretary; and

(iv) Targets for future improper payment rates.

(3) Subsequent progress reports must be submitted as requested by the Assistant Secretary.

(4) Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.